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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

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7 JOSEPH VALDEZ, individually and)
8 on behalf of all others similarly situated,)

9 Plaintiffs,)

10 vs.)

11 COX COMMUNICATIONS LAS)
12 VEGAS, INC., VIDEO INTERNET)
13 PHONE INSTALLS, INC., QUALITY)
COMMUNICATIONS, INC., SIERRA)
COMMUNICATIONS, CO.,)

14 Defendants.)
15

2:09-CV-01797-PMP-RJJ

ORDER

16 Before the Court for consideration is Defendant Cox Communications Las
17 Vegas, Inc.'s fully briefed Motion for Summary Judgment (Doc. #74). The Court
18 conducted a hearing regarding Defendant's Motion on August 2, 2010.

19 Also before the Court for consideration is Plaintiff's Motion Under FRCP
20 Rule 56(f) for an Order Directing Additional Discovery (Doc. #120), and Plaintiff's
21 Motion to file a Supplement of New Authority in Opposition to Defendant Cox's
22 Motion for Summary Judgment (Doc. #130).

23 Defendant's Motion for Summary Judgment (Doc. #74) is combined with
24 Defendant's Motion to Disqualify Plaintiff as the Class Representative (Doc. #75)
25 which is the subject of a separate Order of this Court (Doc. #112) entered June 30,
26 2010.

1 Defendant's Motion for Summary Judgment is predicated on its argument
2 that Cox Communications Las Vegas Inc., is not a joint employer for purposes of
3 FLSA liability under 29 U.S.C. § 216(b). Additionally, Defendant Cox argues that it
4 cannot be liable under NRS § 608.150, because Nevada state law conflicts with the
5 FLSA.

6 Turning first to Defendant's Motion for Summary Judgment with regard to
7 Plaintiff's claim under NRS § 608.150, the Court finds a plain reading of the statute
8 entitles Defendant Cox to the relief requested. NRS § 608.150 is expressly limited to
9 original contractors engaged in the "erection, construction, alteration or repair of any
10 building or structure, or other work." The record before the Court does not support a
11 finding that Defendant Cox is engaged in such a construction business. The Court
12 will therefore grant Defendant Cox's Motion for Summary Judgment with respect to
13 Plaintiff's claim under NRS § 608.150.

14 The Court finds, however, the question of whether Defendant Cox may be
15 construed as a "joint employer" for purposes of liability under the FLSA is more
16 problematic. The parties cite a host of factors to be considered in determining
17 whether Defendant Cox qualifies as a joint employer under the FLSA. The Court
18 finds that Plaintiff has raised reasonable issues of material fact whether Defendant
19 Cox could be found by a reasonable fact finder to be a joint employer. Moreover,
20 although Defendant Cox is correct that Plaintiff's Motion for Additional Discovery
21 under Rule 56(f) of the Federal Rules of Civil Procedure is procedurally defective,
22 the Court finds that Plaintiff has shown good cause to warrant limited additional
23 discovery as outlined in Plaintiff's Motion for Rule 56(f) discovery (Doc. #120).

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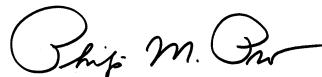
1 **IT IS THEREFORE ORDERED** that Defendant Cox Communications
2 Las Vegas, Inc.'s Motion for Summary Judgment (Doc. #74) is **GRANTED** as to
3 Plaintiff's claim under NRS § 608.150.

4 **IT IS FURTHER ORDERED** that Defendant Cox's Motion for
5 Summary Judgment (Doc. #74) is **DENIED** in all other respects.

6 **IT IS FURTHER ORDERED** that Plaintiff's Motion Under FRCP Rule
7 56(f) for an Order Directing Additional Discovery (Doc. #120) is **GRANTED** to the
8 extent that discovery is reopened for a period of 90 days, to and including
9 **December 7, 2010**, within which to conduct additional discovery relevant to the
10 issue of Cox Communications status as a joint employer for purposes of liability
11 under the FLSA. The separate Order of this Court granting Defendant's Motion for
12 Interlocutory Appeal (Doc. #114) shall not preclude the parties from conducting this
13 discovery.

14 **IT IS FURTHER ORDERED** that Plaintiff's Motion to File a
15 Supplement New Authority in Opposition to Defendant Cox's Motion for Summary
16 Judgment (Doc. #130) is **GRANTED**.

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18 DATED: September 13, 2010.

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21 PHILIP M. PRO
22 United States District Judge
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